Maimunah bte Megat Montak v Mayban Finance Bhd

SUPREME COURT (KUALA LUMPUR) — CIVIL APPEAL NO 02-471-93
EDGAR JOSEPH JR, WAN YAHYA FCJJ AND ABU MANSOR JCA
3 JULY 1996

Land Law *— Charge — Order of sale — Validity — Auction date not fixed — Amount actually due under charge not stipulated — Non-compliance with s 257(1)(b) & (c) of National Land Code 1965 — Whether fatal*

This was an appeal by a chargor against an order of the High Court, enforcing a charge registered under the National Land Code 1965 ('the Code'). The order was made pursuant to the chargee's application by way of originating summons, wherein the principal reliefs prayed for were that the charged land be sold by public auction and for vacant possession thereof. It was common ground that the order for sale had neither fixed the auction date nor stipulated the amount actually due under the charge, as required by s 257(1)(b) and (c) of the Code respectively. The question which arose was in respect of the legal consequences of such non-compliance.

Held, allowing the appeal:

The provisions of s 257(1)(a)–(d) of the Code were mandatory, and as the order for sale in the present case had suffered from the defects as herebefore mentioned, it was thereby invalidated (see p 424A).

[Bahasa Malaysia summary

Ini merupakan suatu rayuan daripada penggadai terhadap perintah Mahkamah Tinggi yang menguatkuasakan satu gadaian yang didaftarkan di bawah Kanun Tanah Negara 1965 ('Kanun tersebut'). Perintah itu dibuat setelah pemegang gadaian membuat permohonan secara saman pemula di mana relief-relief utama yang dipohon ialah supaya tanah yang digadai itu dijual secara lelong awam dan milikan kosong. Adalah tidak dinafikan bahawa perintah jualan itu tidak menetapkan tarikh lelong dan amaun sebenar yang patut dibayar di bawah gadaian itu, seperti yang dikehendaki oleh s 257(1)(b) dan (c) Kanun tersebut. Persoalan yang timbul ialah mengenai akibat yang disebabkan oleh ketidakpatuhan itu di sisi undang-undang.]

Diputuskan, membenarkan permohonan:

Peruntukan-peruntukan s 257(1)(a)–(d) Kanun tersebut adalah mandatori, dan oleh kerana perintah jualan dalam kes ini tidak mematuhi apa yang dikehendaki oleh Kanun tersebut, ia adalah tidak sah (lihat ms 424A).

A **Notes**

For cases on orders for sale, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1471–1500.

Cases referred to

B *Citibank NA v Ibrahim bin Othman* [1994] 1 MLJ 608
Perwira Affin Bank Bhd v Tan Tian Ser [1995] 2 CLJ 133

Legislations referred to

National Land Code 1965 s 257(1)(a), (b), (c), (d)
C Rules of the High Court 1980 O 83 r 3

Appeal from: Originating Summons No S6–24–428–90 (High Court, Kuala Lumpur)

Teh Meng Teck (*Cheah Teh & Su*) for the appellant.
D *Kharida bte Ramli* (*Samat Din & Partners*) for the respondent.

Edgar Joseph Jr FCJ (delivering the judgment of the court): This was an appeal by a chargor against an order of the High Court, Kuala Lumpur, enforcing a charge registered under the National Land Code 1965, ('the
E Code'). The order was made pursuant to the chargee's application by way of originating summons, wherein the principal reliefs prayed for were that the charged land be sold by public auction to satisfy the total amount due and owing to the chargee under the charge and for vacant possession thereof.

F As it was common ground that the order for sale aforesaid had neither fixed the auction date nor stipulated the amount actually due under the charge, as required by s 257(1)(b) and (c) of the Code, respectively, we invited counsel on both sides to argue, as a preliminary point of law, the question of what the legal consequences of such non-compliance were.

G Section 257(1) provides:

257(1) Every order for sale made by the Court under section 256 shall —

(a) provide for the sale to be by public auction;

(b) require the sale to be held on, or as soon as may be after, a date
H specified therein, being a date not less than one month after the date on which the order is made;

(c) specify the total amount due to the chargee at the date on which the order is made; and

(d) require the Registrar of the Court to fix a reserve price for the purpose of the sale, being a price equal to the estimated market
I value of the land or lease in question.

At the conclusion of the argument, we were unanimously of the opinion, that the provisions of s 257(1)(a) to (d) were mandatory, and as the order for sale in the present case had suffered from the defects herebefore mentioned, it was thereby invalidated.

We would add, that insofar as there was a conflict of judicial opinion, as to the applicability of the provisions of O 83 r 3 of the Rules of the High Court 1980, to an application for an order seeking enforcement of a charge registered under the Code, by way of an order for sale, as appeared from the judgments of Shankar J (as he then was) in *Citibank NA v Ibrahim bin Othman* [1994] 1 MLJ 608 on the one hand, and Abdul Aziz bin Mohamad J in *Perwira Affin Bank Bhd v Tan Tian Ser* [1995] 2 CLJ 133 on the other, we preferred the reasoning and conclusion of Shankar J.

In the result, we allowed the appeal with costs, both here and below and set aside the judgment of the High Court. The deposit was ordered to be refunded.

Order accordingly.

Reported by Isabel Liong